



COMMUNITY DEVELOPMENT

HEARINGS OFFICER PUBLIC HEARING: 247-22-000281-DR, 282-DR; INITIATION OF USE OF NONFARM DWELLING APPROVALS

6:00 PM, TUESDAY, JUNE 28, 2022

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St – Bend

(541) 388-6575 | www.deschutes.org

AGENDA

MEETING FORMAT

This meeting will be conducted electronically, by phone, in person, and using Zoom.

Members of the public may view the meeting in real time via the Public Meeting Portal at www.deschutes.org/meetings.

Members of the public may listen, view, and/or participate in this hearing using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link: <https://us02web.zoom.us/j/82892043938>.

Using this option may require you to download the Zoom app to your device.

Members of the public can access the meeting via telephone, dial **+1 669 900 9128**. When prompted, enter the following Webinar ID: **828 9204 3938**. Written comments can also be provided for the public comment section to daniel.dimarzo@deschutes.org by 6:00pm on June 28, 2022. They will be entered into the record.

1. A public hearing to determine whether the nonfarm dwellings approved under CU-04-50 & CU-04-54, as part of MP-04-12, have been initiated pursuant to Deschutes County Code 22.36.020.

PUBLIC HEARING



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 617-4747.



STAFF REPORT

FILE NUMBER: 247-22-000281-DR; 247-22-000282-DR

SUBJECT PROPERTY/
OWNER:

Mailing Name: GROSSMAN, KEITH
Map and Taxlot: 1412270000402
Account: 248043
Situs Address: 9295 NW COYNER AVE, REDMOND, OR 97756

Mailing Name: NELSON, JOSEPH W ET AL
Map and Taxlot: 1412270000401
Account: 248042
Situs Address: 9299 NW COYNER AVE, REDMOND, OR 97756

APPLICANTS:

Keith Grossmann, Roger Grossmann, Cynthia Grossmann, Joseph Nelson, Diane Nelson

REQUEST:

Declaratory Ruling to determine whether the nonfarm dwellings approved under land use file nos. CU-04-50 & CU-04-54, as part of MP-04-12, have been initiated.

STAFF CONTACT:

Dan DiMarzo, Assistant Planner
Phone: 541-330-4620
Email: daniel.dimarzo@deschutes.org

RECORD:

Record items can be viewed and downloaded from:
www.buildingpermits.oregon.gov

I. **APPLICABLE CRITERIA**

Title 22, Deschutes County Development Procedures Ordinance

II. **BASIC FINDINGS**

LOT OF RECORD: The subject properties are recognized as two separate legal lots of record; tax lot 402, and tax lot 401, pursuant to land use file no. MP-04-12.

SITE DESCRIPTION: Subject property #1, tax lot 402, is approximately 11.08 acres in size, and currently undeveloped. The property is sparsely covered with juniper trees and low-lying native vegetation. The grade is relatively flat throughout, with exception of a rocky plateau within the rear 1/3 of the property. The property is an L-shaped flag lot with access to NW Coyner Ave. to the south by way of a ± 2,800 foot easement.

Subject property #2, tax lot 401, is approximately 10.21 acres in size, and currently undeveloped. The property is sparsely covered with juniper trees and low-lying native vegetation. The grade is relatively flat throughout, with exception of a rocky plateau within the rear 1/3 of the property. The property is an L-shaped flag lot with access to NW Coyner Ave. to the south by way of a ± 3,700 foot easement.

PUBLIC COMMENTS: A public comment from Central Oregon LandWatch was received, which staff addresses in the body of the staff report. The public comment, in its entirety, is included in the record and incorporated herein by reference.

AGENCY COMMENTS: In response to the Wetland Land Use Notice, the following comments were received from the Oregon Department of State Lands.

Department of State Lands: Chris Stevenson, April 20th, 2022

It is unlikely that there are jurisdictional wetlands or waterways on the property based upon a review of wetland maps, the county soil survey and other available information.

REVIEW PERIOD: The subject application(s) were submitted on April 6th, 2022 and April 11th, 2022, respectively, and deemed incomplete by the Planning Division on May 5th, 2022. After the submittal of additional information, the applications were deemed complete by the Planning Division on May 18th, 2022. The 150th day on which the County must take final action on this application is October 15th, 2022.

III. FINDINGS & CONCLUSIONS

Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.08, General Provisions.

Section 22.08.010, Application Requirements.

- A. *Property Owner. For the purposes of DCC 22.08.010, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.***
- B. *Applications for development or land use actions shall:***
 - 1. *Be submitted by the property owner or a person who has written***

authorization from the property owner as defined herein to make the application;

- 2. Be completed on a form prescribed by the Planning Director;**

FINDING: The subject applications were submitted and signed by the property owners' agent, Lisa Andrach. The applications were supplemented with a signed Land Use Authorization Form, which states that the agent has authority concerning any and all properties owned by Keith Grossman, Roger and Cynthia Grossman, and Joseph W. and Diane M. Nelson. Therefore, this criterion is met.

Chapter 22.36, Limitations on Approvals.

Section 22.36.010, Expiration of Approval.

Duration of Approvals.

...

- B. Except as otherwise provided under DCC 22.36.010 or under applicable zoning ordinance provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.**

- 4. The approval period for the following dwellings in the Exclusive Farm Use and Forest Use Zones is for 4 years:**

- a. Nonfarm dwelling**

FINDING: Under this criterion, a permit is void if not timely initiated. Staff believes that the permit can only have one of two status: initiated or void. Staff believes any actions (or inactions) taken after this date are irrelevant to the determination of initiation of use.

Section 22.36.020, Initiation of use.

- A. For the purposes of DCC 22.36.020, development action undertaken under a land use approval described in DCC 22.36.010, has been "initiated" if it is determined that:**

- 1. The proposed use has lawfully occurred;**

FINDING: It appears that no party argues that the proposed use has lawfully occurred.

- 2. Substantial construction toward completion of the land use approval has taken place; or**

FINDING: The applicant argues substantial construction towards completion of the land use approval has taken place. For this reason, staff addresses subsection B and the definition of 'substantial construction' below.

- 3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.**

FINDING: This criterion applies where construction was not required by the approval. Staff notes that the approvals granted under CU-04-50 and CU-04-54 required building permit applications within four (4) years of the date the decisions became final, or approval of an extension under Title 22 of Deschutes County Code. CU-04-50 and CU-04-54 do not have any approved extensions under Title 22 on file. The applicants claim a “good faith effort” towards “substantial construction” had occurred. The applicants’ claim is addressed in detail below.

B. For the purposes of DCC 22.36.020, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

FINDING: At the outset, staff notes that interpretation of this criterion has not been before a Hearings Officer or the Board of County Commissioners previously. DCC 22.26.020 was adopted by the county in Ordinance No. 95-018, in 1995 and has not changed since.

Staff believes this criterion presents a multi-pronged test to determine when "substantial construction" has occurred:

- 1) The holder of the approval has physically altered the land or structure or changed the use thereof;
- 2) such alteration or change is directed toward the completion [of the development]; and
- 3) [such alteration or change] is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development

Staff reads this criterion to require that at least some physical alteration of the land or structure or change of use has occurred during the pendency of the permit. This appears to have occurred in this case.

Staff reads this criterion to require that any alteration or change, to be considered under this criterion, must be directed towards the completion of the development. Thus, any alterations or changes that are uniquely directed to other developments, not included in the permit, must be disregarded. For example, in the case of a nonfarm dwelling, a separate on-site driveway to an agricultural barn would not be directed toward the residential permit on the property. Staff believes that partial construction, among other actions summarized below, was directed towards the completion of the development.

The final prong of this criterion presents a significant interpretive challenge. A “good faith effort” measured in “time, labor or money” offers no objective evaluation. While not binding in this case, staff finds the following caselaw helpful:

"Good faith effort" is defined as "what a reasonable person would determine is a diligent and honest effort under the same set of facts or circumstances." *Troutt v. City of Lawrence*, 2008 U.S. Dist. LEXIS 61641 (S.D. Ind. Aug. 8, 2008)

Under this approach to good faith effort, the analysis would be specific to the facts or circumstances of the case and would be evaluated by what a reasonable person would determine is a diligent and honest effort, given those facts and circumstances. Staff believes the Hearings Officer will have to make the initial interpretive choice, whether the diligent and honest effort is generic to the type of application or is specific to the circumstances that prevented the holder of the permit from completing the development.

Next, staff believes, the Hearings Officer will need to determine if the "time, labor or money" invested in the project was "sufficient" to constitute a good faith effort. Staff appreciates the Hearing Officer's careful review of this matter and includes applicant and opponent testimony on this issue below.

The burden of proof (BoP) details actions undertaken by the applicant to initiate the use. For the purposes of this review staff includes a separate table for each application summarizing those actions and expenditures. These tables include a column for physical alteration and whether staff agrees the action was a physical alteration of the land that is directed towards completion of the nonfarm dwellings. For the purposes of this review, staff has divided, in half, the expenditures related to Utility Vaults, Road Grading, and Utility Trenching in an effort to independently analyze each application on its own merits. Staff requests the Hearings Officer make specific findings regarding the segregation of applicable expenditures, and which of the cited expenses comply with the requirements of this criterion.

Table 1 – 9295 Coyner Ave. (247-22-000281-DR)

Description	Invoice Date (CUPs finalized: 7/14/04)	Amount	Physical Alteration? Nexus to CUP approvals?
Road Construction	3/31/04	\$9,806.00	Yes. Unclear of nexus to CUP approvals (re: date)
Driveway Access Permit	2/24/05	\$175.00	No.
Utility Vaults	3/31/05	\$1,075.00	Yes/Yes
Road Grading, Utility Trenching	3/31/05	\$8,009.75	Yes/Yes
Utility Trenching	4/29/05	\$6,503.75	Yes/Yes
Survey	5/4/05	\$5,591.00	No.
Electrical Services Extension	5/18/05	\$15,038.00	Yes. No. Invoice describes

			services to tax lot 400 - 9293 NW Coyner Ave.
Survey	9/24/05	\$2,780.00	No.
Signage	9/26/05	\$1,185.38	No.
200 Amp. Transformer Install	10/10/05	\$3,196.50	Yes. Unclear of nexus to CUP approvals (invoice appears to describe tax lot 400 - 9293 NW Coyner Ave., "Coyner Ave. Lake")
Loads of mulch	7/5/06	\$1,612.50	No.
Landscape Screening	5/31/08	\$1,512.50	No.
9295 NW Coyner Real Estate Taxes	2005-2020	\$81,107.00	No.
Grand Total for Physical Alteration		\$15,588.50	

Table 2 - 9299 Coyner Ave. (247-22-000282-DR)

Description	Invoice Date (CUPs finalized: 7/14/04)	Amount	Physical Alteration? Nexus to CUP approvals?
Road Construction	3/31/04	\$9,806.00	Yes. Unclear of nexus to CUP approvals (re: date)
Driveway Access Permit	2/24/05	\$175.00	No.
Utility Vaults	3/31/05	\$1,075.00	Yes/Yes
Road Grading, Utility Trenching	3/31/05	\$8,009.75	Yes/Yes
Utility Trenching	4/29/05	\$6,503.75	Yes/Yes
Survey	5/4/05	\$5,591.00	No.
Electrical Services Extension	5/18/05	\$15,038.00	Yes. No. Invoice describes services to tax lot 400 - 9293 NW Coyner Ave.
Survey	9/24/05	\$2,780.00	No.
Signage	9/26/05	\$1,185.38	No.
200 Amp. Transformer Install	10/10/05	\$3,196.50	Yes. Unclear of nexus to CUP approvals (invoice appears describe tax lot

			400 - 9293 NW Coyner Ave., "Coyner Ave. Lake")
Loads of mulch	7/5/06	\$1,612.50	No.
Landscape Screening	5/31/08	\$1,512.50	No.
9299 NW Coyner Real Estate Taxes	2005-2020	\$67,816.00	No.
Grand Total for Physical Alteration		\$15,588.50	

Below, staff includes excerpts from the Burden of Proof statement as well as a declaration from Cynthia Grossmann that explains her reasons for not finalizing the construction as planned.

FACTS AND ARGUMENT IN SUPPORT OF INITIAION OF DEVELOPMENT

Generally, the investment of up [to] at least 10% towards completion of the development, together with on-the-ground improvements, all which are made in good faith to further the proposed use of the subject property for a nonfarm dwelling, is sufficient to determine that the right to continue the use has vested.

In support of this analysis, the applicants submit the following evidence:

1. Expenditures:

The applicants have invested over \$211,440.50 towards development of the subject vacant land for dwellings. (Exhibit 4 – Summary of expenditures and related invoices)

An access approach and shared driveway have been developed for residential access.

The [p]ower has been installed for domestic use. The electrical lines have been extended to the Lots, and buried in the ground.

Applicants have installed landscape screening required by the decision.

The County [A]ssessor disqualified the parcels for farm use in 2005 and has been assessing the parcels as developable parcels for a nonfarm dwelling since 2006. Therefore, the applicants have paid more than \$114,000 in real property taxes.

2. Conditions of Approval and Duration of Approval

The applicants satisfied all of the conditions of approval and submitted final plat review for the partition within the required two (2) years from the date that the decision became final. (Decision Page 20). The decision was final July 14, 2004, and the [f]inal [p]lat was approved and recorded in April 2005.

Keith Grossmann sold Parcel 2 to Cynthia and Roger Grossmann, and Jack and Diane Nelson in 2005 while the land use approval was still in effect, and therefore the approval transferred

with the land. (Exhibit 5 – Vesting Deed for Grossmann/Nelson ownership) While the applicant were making substantial investment toward the necessary improvements needed to establish a dwelling on each lot, the applicants did not timely apply for the building permit within the 4 years pr[e]scribed by the decision. Therefore, the applicants are requesting declaration of a vested right to now apply for the permit.

3. Good Faith

The attached receipts show that the improvements and expenditures were made within the year following the land use approval. Therefore, the applicant did not expend the sums after the expiration of the 4 years, but did so in furtherance of the development promptly after the approval. However, the economy went into recession shortly thereafter, and it was nearly impossible to sell real property – especially property that needed to be developed. The market for developable land has once again improved in Central Oregon, and the applicant is ready to complete the approved development.

4. Hard Costs and On-the-Ground Improvements

As set forth above, the applicant has spent over \$211,440.50 towards the use of the subject parcels for nonfarm dwelling purposes as approved. The electric/power installation, road access, and driveway improvements are all on-the-ground improvements that serve only the use of the subject parcels for residential purposes. The subject property is zoned EFU, and the improvements are not of applicable to any other out-right use of the property as farmland.

5. Ratio Analysis

The ratio of the investment in relation to the total cost of the project easily exceeds the 10% threshold that Deschutes County customarily uses in similar reviews.

Here, even if the total project cost for development of the nonfarm dwelling on each lot is \$300,000 (access, utility, and building cost), then the investment of over \$100,000 per lot is at least 33% invested toward completion of the project.

CONCLUSION

The applicants have initiated development of the lots for the nonfarm dwelling pursuant to the land use approval. The investments have been directed towards the establishment of the 2 approved nonfarm dwellings, in good faith. The ratio of the investment made in relation to the total project cost is substantial enough to find that the applicants’ right to the building permits has vested.

DECLARATION FROM CYNTHIA GROSSMANN (April 10, 2022)

I had Lisa Andrach finish the CUP renewals on The Coyner Properties with all the receipts to show improv[e]ments to refresh those CUPs. She turned those in last week but I don't see that reflected on Dial yet. It was my son and daughter in[-]laws property and she got cancer and passed away so between the recession and our grief these were not built on as planned. We have an offer on the properties and the buyers are hanging the closing on the CUPs and would like to know how long that process will take. Do you have an estimate? I know you are very busy and things can take [a] while but hopefully this will be an administrative decision and will not have to go before Land Watch since they were previously approved and have had improvements done and actually one has been sold previously. Let me know if there is anything else I might need.

Below, staff includes the opposition letter from Carol Macbeth.

Carol Macbeth of Central Oregon LandWatch (April 19th, 2022)

LandWatch is concerned that these applications do not qualify for the initiation of use requested pursuant to DCC 22.36.010.

There has been no change in the County's zoning ordinances affecting these properties. The change in status is due to the applicants' own inaction. According to the applicants' submission applicants have not expended any money on these approvals since 2008, 14 years ago, but nonfarm dwelling approvals expire after four years. The intent of expirations is to protect against perpetual uses while circumstances continue to change around the properties. The applicants are free to apply again for these uses, but insufficient evidence of investment was made to legally qualify for initiation of use prior to the expiration of these permits.

The road can be seen in aerial photographs to serve at least one of the neighboring farms which are in active farm use. Much of the road appears in aerial photographs to have been constructed prior to approval of the dwellings. The bills to construct the road were apparently paid by the owner of one of the adjacent farms, also applicants for at least one of the nonfarm dwellings. The relationship of the entity that paid the bills, RC Construction, to the owners of at least one of the nonfarm dwellings is unclear. The road appears to be in active use to access a neighboring farm, thus the costs do not appear to have been incurred for this use or solely for this use.

Real property taxes must be paid whether or not construction is undertaken. They are not evidence of construction and therefore are not legally relevant to the determination of an [initiation] of use pursuant to DCC 22.36.010. Including the road shared by neighboring farmers, the construction to date (minus the irrelevant taxes) does not exceed \$62,500. The road is not part of the construction costs of a home, which averages approximately \$300,000 in Deschutes County. The amount expended does not constitute even ten percent of the total cost.

The applicants have not met their burden of proof that a use was [initiated] 14 years ago for approvals granted 18 years ago.

For the above reasons these applications should be denied. Please consider LandWatch a party to these proceedings and notify us of any decision.

Staff notes the argument is made regarding the time since the permit has elapsed. Again, staff believes that the permit can only have one of two status: initiated or void. Staff believes any actions (or inactions) taken after this date are irrelevant to the determination of initiation of use. Staff requests the Hearings Officer make a finding on whether road construction payment by an adjacent farm is relevant to this review.

Staff notes that most approvals, with the notable exception of non-conforming uses, are not subject to becoming void through interruption or abandonment. Staff notes that landscape screening was not a required condition of approval pursuant to CU-04-50 & CU-04-54. For this reason, staff believes landscaping costs should not be included in the accounting of applicable expenditures. Finally staff notes that both Applicant and Opponent reference a 10 percent standard for initiation of use, which does not appear in code.

Based on the BoP and evidence in the record, it is unclear to staff if evidence provided herein constitutes a good faith effort towards construction of the nonfarm dwellings. Staff requests the Hearings Officer make detailed findings on these issues.

Chapter 22.40, Declaratory Ruling.

Section 22.40.010, Availability of Declaratory Ruling.

A. Subject to the other provisions of DCC 22.40.010, there shall be available for the County's comprehensive plans, zoning ordinances, the subdivision and partition ordinance and DCC Title 22 a process for:

...

3. Determining whether an approval has been initiated or considering the revocation of a previously issued land use permit, quasi judicial plan amendment or zone change;

...

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with DCC 22.40. In all cases, as part of making a determination or interpretation the Planning Director (where appropriate) or Hearings Body (where appropriate) shall have the authority to declare the rights and obligations of persons affected by the ruling.

FINDING: The applicant is requesting a determination on whether the nonfarm dwellings approved under land use file nos. CU-04-50 & CU-04-54, as part of MP-04-12, have been initiated.

- B. *A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.***

FINDING: The applicant is requesting a determination on whether the nonfarm dwellings approved under land use file nos. CU-04-50 & CU-04-54, as part of MP-04-12, have been initiated. Staff finds this is an instance involving a fact-specific controversy, and will resolve and determine the particular rights and obligations of parties to the controversy. The applicant has not requested an advisory opinion. This proceeding is not being used as a substitute for seeking an amendment of general applicability to a legislative enactment.

- C. *Declaratory rulings shall not be used as a substitute for an appeal of a decision in a land use action or for a modification of an approval. In the case of a ruling on a land use action a declaratory ruling shall not be available until six months after a decision in the land use action is final.***

FINDING: The applicant is requesting a determination on whether the nonfarm dwellings approved under land use file nos. CU-04-50 & CU-04-54, as part of MP-04-12, have been initiated. Staff finds this application is not an appeal of a decision in a land use action or for a modification of an approval. The proposal does not include a ruling on a land use action under this criterion.

- D. *The Planning Director may refuse to accept and the Hearings Officer may deny an application for a declaratory ruling if:***
- 1. *The Planning Director or Hearings Officer determines that the question presented can be decided in conjunction with approving or denying a pending land use application or if in the Planning Director or Hearing Officer's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial plan amendment or zone change or a land use permit not yet filed; or***
 - 2. *The Planning Director or Hearings Officer determines that there is an enforcement case pending in district or circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.***

The Planning Director or Hearings Officer's determination to not accept or deny an application under DCC 22.40.010 shall be the County's final decision.

FINDING: Staff finds the applicant's request for a declaratory ruling is not a question that can be decided in conjunction with some other land use application, plan amendment or zone change. In addition, there is no formal enforcement case pending in district or circuit court on this matter at this time. These criteria do not apply.

Section 22.40.020, Persons Who May Apply.

- A. DCC 22.08.010(B) notwithstanding, the following persons may initiate a declaratory ruling under DCC 22.40:**
 - 1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property.**
 - 2. In cases where the request is to interpret a previously issued quasi-judicial plan amendment, zone change or land use permit, the holder of the permit; or**
 - 3. In all cases arising under DCC 22.40.010, the Planning Director.**

FINDING: The subject applications were submitted and signed by the property owners' agent, Lisa Andrach. The applications were supplemented with a signed Land Use Authorization Form, which states that the agent has authority concerning any and all properties owned by Keith Grossman, Roger and Cynthia Grossman, and Joseph W. and Diane M. Nelson. Therefore, this criterion is met.

- B. A request for a declaratory ruling shall be initiated by filing an application with the planning division and, except for applications initiated by the Planning Director, shall be accompanied by such fees as have been set by the Planning Division. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The applicant shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the Planning Division.**

FINDING: The applicant is requesting a determination on whether the nonfarm dwellings approved under land use file nos. CU-04-50 & CU-04-54, as part of MP-04-12, have been initiated. The applicant filed the necessary declaratory ruling application and paid the required fee.

Section 22.40.030, Procedures.

Except as set forth in DCC 22.40 or in applicable provisions of a zoning ordinance, the procedures for making declaratory rulings shall be the same as set forth in DCC Title 22 for land use actions. Where the Planning Division is the applicant, the Planning Division shall bear the same burden that applicants generally bear in pursuing a land use action.

FINDING: The declaratory ruling application is being processed according to Title 22. The decision will be noticed and sent to all required parties. This criterion will be met.

Section 22.40.040, Effect of Declaratory Ruling.

- A. A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.**
- B. DCC 22.28.040 notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.**

- C. **Except where a declaratory ruling is made by the Board of County Commissioners, the ruling shall not constitute a policy of Deschutes County.**

FINDING: Staff finds these criteria apply to this application and limit reapplication for a declaratory ruling on the same question. This declaratory ruling does not constitute a policy of Deschutes County.

IV. CONCLUSION

Based on the foregoing findings, staff asks the Hearings Officer to determine whether the nonfarm dwellings approved under land use file nos. CU-04-50 & CU-04-54, as part of MP-04-12, have been initiated.

Other permits may be required. The applicants are responsible for obtaining any necessary permits from the Deschutes County Building Division and Deschutes County Environmental Soils Division as well as any required state and federal permits.

V. RECCOMENDED CONDITIONS OF ANY APPROVAL

Should the Hearings Officer determine the nonfarm dwellings have been initiated, staff recommends the following condition of approval:

- A. The conditions of approval associated with CU-04-50 & CU-04-54 remain in effect.

VII. DURATION OF APPROVAL

Staff recommends the Hearing Officer include specific language describing the duration of approval in the event the use is found to be initiated.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Dan DiMarzo, Assistant Planner



Reviewed by: Will Groves, Planning Manager

